

**§ 40.12 Staying of certification and tolling of review period pending jurisdictional determination.**

*(a) Notice of novel derivative products.*

(1) A registered entity certifying, submitting for approval, or otherwise filing a proposal to list, trade, or clear a novel derivative product (other than a product subject to the provisions of § 1.8 of this chapter) having elements of both a security and a contract for the sale of a commodity for future delivery (or an option on such contract or an option on a commodity) may provide notice of its proposal to the Commission and the Securities and Exchange Commission with a statement that written notice has been provided to both agencies through an appropriate means provided in each Commission's regulations.

(2) If concurrent notice is not provided pursuant to § 40.12(a)(1), the Commission shall notify the Securities and Exchange Commission of the registered entity's submission of a novel derivative product described in § 40.12(a)(1) and accompany such notice with a copy of the submission. The Commission shall determine whether a particular submission is a novel derivative product requiring notice to the Securities and Exchange Commission not later than five business days subsequent to the date that the registered entity submits the product for Commission review.

*(b) Tolling of review period.* Upon receipt of a request for a jurisdictional determination, pursuant to Section 718(a)(2) of the Dodd-Frank Act, by the Commission or the Securities and Exchange Commission, the product certification shall be stayed or the approval review period shall be tolled until a final determination order is issued.

(1) The Commission will provide the registered entity with a written notice of stay pending issuance of a final determination order by the Commission or the Securities and Exchange Commission.

(2) The stay shall be withdrawn or the approval review period shall resume upon the Commission's or the Securities and Exchange Commission's issuance of a final determination order

finding that the Commission has jurisdiction over the submission.

*(3) Determination order.* A final determination, for purposes of § 40.12(b) of this part, shall be a determination order issued by the Commission or the Securities and Exchange Commission pursuant to Section 718(a)(3) of the Dodd-Frank Act.

*(c) Judicial review of determination order.* The filing of a petition by a complaining Commission, pursuant to Section 718(b) of the Dodd-Frank Act, shall operate as a stay of the agency order.

(1) The stay shall remain in effect until the date on which the United States Court of Appeals for the District of Columbia Circuit issues a final determination pursuant to Section 718(b)(4) of the Dodd-Frank Act, or until such date that there is a final disposition of an appeal of that determination.

(2) The submission review period shall resume upon issuance of a final determination, as described in § 40.12(c)(1), that the Commission has jurisdiction over the submission.

**APPENDIX A TO PART 40—SCHEDULE OF FEES**

*(a) Applications for product approval.* Each application for product approval under § 40.3 must be accompanied by a check or money order made payable to the Commodity Futures Trading Commission in an amount to be determined annually by the Commission and published in the FEDERAL REGISTER.

*(b) Checks and applications should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.*

*(c) Failure to submit the fee with an application for product approval will result in return of the application. Fees will not be returned after receipt.*

**APPENDIXES B–C TO PART 40 [RESERVED]**

**APPENDIX D TO PART 40—SUBMISSION COVER SHEET AND INSTRUCTIONS**

*(a) A properly completed submission cover sheet shall accompany all rule and product submissions submitted electronically by a registered entity in a format and manner specified by the Secretary of the Commission*

to the Secretary of the Commission. A properly completed submission cover sheet shall include all of the following:

1. *Identifier Code (optional)*—A registered entity Identifier Code at the top of the cover sheet, if applicable. Such codes are commonly generated by registered entities to provide an identifier that is unique to each filing (*e.g.*, NYMEX Submission 03–116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (*e.g.*, CBOT).

4. *Filing as a*—Check in the appropriate box indicating that the rule or product is being submitted by a designated contract market (DCM), derivatives clearing organization (DCO), swap execution facility (SEF), or swap data repository (SDR), electronic trading facility with a significant price discovery contract (the term will be removed on July 20, 2012).<sup>1</sup>

5. *Type of Filing*—An indication as to whether the filing is a new rule, rule amendment or new product. The registered entity should check the appropriate box to indicate the applicable category under that heading.

6. *Rule Numbers*—For rule filings, the rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings, a description of the new rule or rule amendment, including a discussion of its expected impact on the registered entity, market participants, and the overall market. The narrative should describe the substance of the submission with enough specificity to characterize all material aspects of the filing.

(b) *Other Requirements*—A submission shall comply with all applicable filing requirements for proposed rules, rule amendments, or products. The filing of the submission cover sheet does not obviate the registered entity's responsibility to comply with applicable filing requirements (*e.g.*, rules submitted for Commission approval under § 40.5 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views).

(c) Checking the box marked “confidential treatment requested” on the Submission Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in § 40.8 and, where appropriate, § 145.9 of this chapter, and will not substitute

<sup>1</sup>Even though ECM–SPDC was eliminated by the Dodd-Frank Act, the Commission will retain references to this entity in the cover sheet since ECMs may be allowed to operate until July 20, 2012, pursuant to grandfather relief issued by the Commission. See 75 FR 56513 (Sept. 16, 2010).

for notice or full compliance with such requirements.

## PART 41—SECURITY FUTURES PRODUCTS

### Subpart A—General Provisions

Sec.

41.1 Definitions.

41.2 Required records.

41.3 Application for an exemptive order pursuant to section 4f(a)(4)(B) of the Act.

41.4–41.9 [Reserved]

### Subpart B—Narrow-Based Security Indexes

41.11 Method for determining market capitalization and dollar value of average daily trading volume; application of the definition of narrow-based security index.

41.12 Indexes underlying futures contracts trading for fewer than 30 days.

41.13 Futures contracts on security indexes trading on or subject to the rules of a foreign board of trade.

41.14 Transition period for indexes that cease being narrow-based security indexes.

41.15 Exclusion from definition of narrow-based security index for indexes composed of debt securities.

### Subpart C—Requirements and Standards for Listing Security Futures Products

41.21 Requirements for underlying securities.

41.22 Required certifications.

41.23 Listing of security futures products for trading.

41.24 Rule amendments to security futures products.

41.25 Additional conditions for trading for security futures products.

41.27 Prohibition of dual trading in security futures products by floor brokers.

### Subpart D—Notice—Designated Contract Markets in Security Futures Products

41.31 Notice-designation requirements.

41.32 Continuing obligations.

41.33 Applications for exemptive orders.

41.34 Exempt provisions.

### Subpart E—Customer Accounts and Margin Requirements

41.41 Security futures products accounts.

41.42 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.

41.43 Definitions.

41.44 General provisions.

41.45 Required margin.